
TITLE 40 STATE ETHICS COMMISSION

Proposed Rule
LSA Document #12-523**DIGEST**

Amends [40 IAC 2-1-1](#) regarding the name of the rule. Amends [40 IAC 2-1-3](#) regarding the purpose of the rule. Amends [40 IAC 2-1-4](#) regarding rule definitions. Amends [40 IAC 2-1-5.5](#) regarding ethics education. Amends [40 IAC 2-1-6](#) regarding acceptable gifts, favors, services, entertainment, food, drink, and honoraria. Amends [40 IAC 2-1-7.1](#) regarding political activity. Amends [40 IAC 2-1-8](#) regarding moonlighting. Amends [40 IAC 2-1-9](#) regarding conflict of interest and prohibitions. Amends [40 IAC 2-2-1](#) regarding the procedure for advisory opinions. Amends [40 IAC 2-2-2](#) regarding appeals from advisory opinions. Amends [40 IAC 2-2-3](#) regarding failure to comply and investigation. Amends [40 IAC 2-2-4](#) regarding advisory opinions signed by the director. Amends [40 IAC 2-2-5](#) regarding others providing information. Amends [40 IAC 2-2-6](#) regarding the public record. Amends [40 IAC 2-3-2](#) regarding investigations. Amends [40 IAC 2-3-3](#) regarding agreed settlements. Amends [40 IAC 2-3-4](#) regarding public hearings. Adds [40 IAC 2-4.5](#) regarding fines. Amends [40 IAC 2-5-1](#) regarding notice of meetings and agendas. Amends [40 IAC 2-5-3](#) regarding meeting by telephone and other communications media technology. Repeals [40 IAC 2-3-5](#) through [40 IAC 2-3-8](#) and [40 IAC 2-4-2](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[40 IAC 2-1-1](#); [40 IAC 2-1-3](#); [40 IAC 2-1-4](#); [40 IAC 2-1-5.5](#); [40 IAC 2-1-6](#); [40 IAC 2-1-7.1](#); [40 IAC 2-1-8](#); [40 IAC 2-1-9](#); [40 IAC 2-2-1](#); [40 IAC 2-2-2](#); [40 IAC 2-2-3](#); [40 IAC 2-2-4](#); [40 IAC 2-2-5](#); [40 IAC 2-2-6](#); [40 IAC 2-3-2](#); [40 IAC 2-3-3](#); [40 IAC 2-3-4](#); [40 IAC 2-3-5](#); [40 IAC 2-3-6](#); [40 IAC 2-3-7](#); [40 IAC 2-3-8](#); [40 IAC 2-4-2](#); [40 IAC 2-4.5](#); [40 IAC 2-5-1](#); [40 IAC 2-5-3](#)

SECTION 1. [40 IAC 2-1-1](#) IS AMENDED TO READ AS FOLLOWS:

Rule 1. Rules and Procedures for the State Ethics Commission**[40 IAC 2-1-1](#) Name of rule****Authority:** [IC 4-2-6-4](#)**Affected:** [IC 4-2-6](#)

Sec. 1. The name of this rule shall be the ~~Indiana code of ethics for the conduct of state business. rules and procedures for the state ethics commission.~~

(*State Ethics Commission; [40 IAC 2-1-1](#); filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.: 15 IR 198; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#)*)

SECTION 2. [40 IAC 2-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-1-3](#) Purpose**Authority:** [IC 4-2-6-4](#)**Affected:** [IC 4-2-6](#)

Sec. 3. (a) ~~This section is intended as a guide to those under the jurisdiction of the state ethics commission and is not a basis for sanctions by the state ethics commission. This section is aspirational in character and represents the objective toward which every public servant should strive. Sections 6 through 9 of this rule are mandatory in character and state minimum levels of conduct below which those under the jurisdiction of the state ethics commission may not fall without being subject to sanctions by the state ethics commission.~~

(b) The purpose of this rule is to set ethical **establish procedural** standards for the official conduct of the

current and former officers and employees of the executive and administrative branches of state government and for persons who have or had a business relationship with an agency so that the general public will have confidence that the conduct of state business is always conducive to the public good. This rule promotes the principle that public office is a public trust where government is based upon the consent of its citizens who are entitled to have complete confidence in the integrity of their government. Thus, the business of the state will be conducted in such a manner as to reassure the citizens of Indiana that the character and conduct of its officials and employees are above reproach. **implementation of the Indiana code of ethics by the state ethics commission.**

(c) The following are goals toward which those under the jurisdiction of the state ethics commission should strive:

- (1) Duties should be carried out impartially.
- (2) Decisions and policy should not be made outside of proper channels of state government.
- (3) Public office should not be used for private gain.
- (4) Public confidence in the integrity of government is essential to the exercise of good government.
- (5) Actions, transactions, or involvements should not be performed or engaged in which have the potential to become a conflict of interest.

(d) This rule is not meant to unduly restrict or limit the behavior of the officers and employees of this state during the time when they are not on duty. Each state officer and employee retains lawful rights and privileges as a private citizen to interests of a personal or private financial nature. These rights and privileges will be honored by the commission to the extent that they are compatible with an individual's public office or employment.

(State Ethics Commission; [40 IAC 2-1-3](#); filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.: 15 IR 198; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 3. [40 IAC 2-1-4](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-1-4](#) Definitions

Authority: [IC 4-2-6-4](#)

Affected: [IC 3-9-2](#); [IC 4-2-6-1](#); [IC 4-2-7-1](#); [IC 4-13-1-4](#); [IC 5-14-3-4](#); [IC 20-12-0.5-1](#); [IC 35-41-1-23](#)

Sec. 4. (a) The definitions in this section apply throughout this article.

(b) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a counsel, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term does not include any of the following:

- (1) The judicial department of state government.
- (2) The legislative department of state government.
- (3) Separate bodies corporate and politic.
- (4) A state educational institution, as defined in [IC 20-12-0.5-1](#).

(c) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.

(d) "Business relationship" means dealings an agency has with a person seeking, obtaining, establishing, maintaining, or implementing:

- (1) a pecuniary interest in a contract or purchase with an agency; or
- (2) a license or permit requiring the exercise of judgment or discretion by the agency.

(e) "Commission" means the state ethics commission created under [IC 4-2-6-2](#).

(f) "Compensation" means any money, thing of value, or financial benefit conferred on or received by any person in return for services rendered, or for services to be rendered, whether by that person or another.

(g) "Conflict of interest" means a situation in which the private financial interest of a state officer, an employee, or the spouse or unemancipated child of a state officer or employee, may influence the state officer's or employee's judgment in the performance of a public duty.

(h) "Employee" means an individual, other than a state officer, who is employed by an agency. The term includes, for the limited purposes of this rule, an individual who contracts with an agency for personal services for more than thirty (30) hours a week for more than twenty-six (26) weeks during any one (1) year period.

(i) "Ethics" means the principles of conduct governing an individual or group.

(j) "Financial interest" means an interest:

- (1) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (2) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of the state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interests of the general public or any state officer or any state employee.

(k) "Gift" means the transfer or promise of a transfer of something of value regardless of the form without adequate and lawful consideration or consideration less than that required of others who are not employees, including the full or partial forgiveness of indebtedness, which is not extended to others who are not state employees on the same terms and conditions. However, "gift" does not include gifts from relatives of less than two hundred fifty dollars (\$250) or campaign contributions subject to [IC 3-9-2](#).

(l) "Honorarium" means a payment of money for an appearance, a speech, or an article but does not include payment or reimbursement of travel expenses for a state employee.

(m) "Information of a confidential nature" means information:

(1) obtained by reason of the position or office held; and

(2) which:

(A) a public agency is prohibited from disclosing under [IC 5-14-3-4\(a\)](#);

(B) a public agency has the discretion not to disclose under [IC 5-14-3-4\(b\)](#) and that the agency has not disclosed; or

(C) the information is not in a public record, but if it were, would be confidential.

(n) "Moonlighting" means any activity for compensation by a state employee outside of state employment.

(o) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(p) "Property" has the meaning set forth in [IC 35-41-1-23](#).

(q) "Public official" means anyone who holds a public office, elected or appointed, at the federal, state, county, or local level.

(r) "Relative" means any person related as father, mother, step father, step mother, brother, sister, step brother, step sister, uncle, aunt, husband, wife, son, daughter, step child, son-in-law, daughter-in-law, grandchild, step grandchild, niece, or nephew.

(s) "State officer" means the governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(t) "Travel expenses" means transportation, lodging, and meals. It may be actual travel expenses or an

amount approximating those expenses which would be allowed by state travel policies and procedures authorized under [IC 4-13-1-4](#)(7).

(u) The masculine gender includes the masculine and feminine.

(v) The singular form of any noun includes the plural wherever appropriate. The definitions in [IC 4-2-6-1](#), [IC 4-2-7-1](#), and [42 IAC 1-3](#) apply throughout this article.

(State Ethics Commission; [40 IAC 2-1-4](#); filed Mar 10, 1988, 2:00 p.m.: 11 IR 2326; filed Oct 22, 1991, 11:10 a.m.: 15 IR 199; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 4. [40 IAC 2-1-5.5](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-1-5.5](#) Ethics education

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 5.5. Each agency's appointing authority shall do the following:

- ~~(1) Require all new employees to participate in ethics training within six (6) weeks of the employee's starting employment date with the agency.~~
- ~~(2) Require all employees to participate in ethics training at least every two (2) years during an employee's tenure with the agency.~~
- ~~(3) Maintain documentation to demonstrate employee compliance with subdivisions (1) and (2).~~

The ethics rule pertaining to ethics education is found in [42 IAC 1-4-1](#).

(State Ethics Commission; [40 IAC 2-1-5.5](#); filed Jul 20, 2005, 1:00 p.m.: 28 IR 3452; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 5. [40 IAC 2-1-6](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-1-6](#) Acceptable gifts, favors, services, entertainment, food, drink, and honoraria

Authority: [IC 4-2-6-4](#)

Affected: [IC 3-9-2](#); [IC 4-2-6](#)

Sec. 6. (a) ~~A state employee or special state appointee, or the spouse or unemancipated child of a state employee or special state appointee, shall not knowingly solicit, accept, or receive any gift, favor, service, entertainment, food, or drink from a person who has a business relationship with the employee's agency or is seeking to influence an action by the employee in his or her official capacity. The following shall not be subject to this section:~~

- ~~(1) Gifts, favors, services, entertainment, food, or drink from public agencies or public institutions.~~
 - ~~(2) Food or drink consumed at a public meeting to which at least twenty-five (25) individuals are invited. A meeting will be considered public if:~~
 - ~~(A) the event is a reception or other gathering for public officials that is not arranged to solicit government procurement of goods or services;~~
 - ~~(B) the employee is giving a speech or participating in a presentation in the employee's official capacity; or~~
 - ~~(C) the meeting has a formal educational program that the employee is attending to assist him or her in performing official duties.~~
 - ~~(3) Mementos or souvenirs of nominal value.~~
 - ~~(4) Food or drink consumed by an employee during negotiations or other activities related to an Indiana economic development corporation economic development project.~~
 - ~~(5) Gifts, favors, services, entertainment, food, or drinks from relatives, so long as:~~
 - ~~(A) the gifts or other items of value are not deducted as a business expense; and~~
 - ~~(B) the gift giver is not seeking to influence an action by an employee in his or her official capacity.~~
- ~~In cases involving ongoing social relationships, employees should seek a waiver under subsection (b) before~~

accepting a gift.

(6) Political contributions subject to [IC 3-9-2](#) that are reported in accordance with applicable law.

(7) Nominal refreshments offered to a state employee conducting official state business while he or she is at a workplace of a person who has a business relationship or seeks to influence official action with the employee's agency.

(8) Discount and other promotional programs approved and made available to state employees through the state personnel department or the Indiana department of administration.

(b) An employee's state officer or appointing authority may waive application of subsection (a) in individual cases when consistent with the public interest. The waiver shall be in writing and shall identify the following:

(1) The employee.

(2) The nature and value of the gift.

(3) The donor of the gift.

(4) Why acceptance of the gift is in the public interest.

Written waivers must be filed with the commission within thirty (30) days of receipt of the gift. The commission may review the written waivers. An appointing authority or state officer may designate authority to the agency's ethics officer to waive application of this rule on behalf of the appointing authority or state officer. The designation shall be in writing and filed with the commission.

(c) A person who has a business relationship with an employee's agency shall not provide any: **(a) The ethics rules pertaining to:**

(1) gifts;

(2) favors;

(3) services;

(4) entertainment;

(5) food; or **and**

(6) drink;

to such employee if the employee would not be permitted to accept the gift, favor, service, entertainment, food, or drink under subsection (a). **are found in [42 IAC 1-5-1](#) and [42 IAC 1-5-2](#).**

(d) An employee shall not personally accept an honorarium for himself or herself for anything that may be considered part of the state employee's official duties. However, a state employee may accept an honorarium in this situation on behalf of the state. The state employee accepting the honorarium shall remit to the treasurer of state any amount received. The treasurer of state shall quietus such funds into the general fund. A state employee may personally accept an honorarium or fee for activities not done in connection with the employee's official duties and that are prepared on the employee's own time and without the use of state resources. However, in no case can a state employee accept an honorarium from a person who has a business relationship or seeks to influence an official action with the employee's agency.

(e) Nothing in this section prohibits contributions to agencies that are made in accordance with applicable law.

(b) The ethics rule pertaining to honoraria is found in [42 IAC 1-5-3](#).

(State Ethics Commission; [40 IAC 2-1-6](#); filed Mar 10, 1988, 2:00 p.m.: 11 IR 2327; filed Oct 22, 1991, 11:10 a.m.: 15 IR 201; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; filed Jul 20, 2005, 1:00 p.m.: 28 IR 3452; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 6. [40 IAC 2-1-7.1](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-1-7.1](#) Political activity

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 7.1. (a) A state employee shall not engage in political activity including solicitation of political contributions from another employee or any other person when on duty or acting in an official capacity.

(b) This section does not prohibit a state employee from engaging in such activity when not on duty.

(c) A state employee shall not solicit political contributions at any time from:

(1) persons whom the employee knows to have a business relationship with the employee's agency; or

(2) state employees directly supervised by the employee.

The ethics rule pertaining to political activity is found in [42 IAC 1-5-4](#).

(State Ethics Commission; [40 IAC 2-1-7.1](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 203; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 7. [40 IAC 2-1-8](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-1-8](#) Moonlighting

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6-5.5](#)

Sec. 8. A state employee shall not engage in outside employment or other outside activity not compatible with agency rules or the full and proper discharge of public duties and responsibilities. This outside employment or other outside activity must not impair independence of judgment as to official responsibilities, pose a likelihood of conflict of interest, or require or create an incentive for the employee to disclose confidential information acquired as a result of official duties. **The ethics rule pertaining to moonlighting is found in [42 IAC 1-5-5 \(IC 4-2-6-5.5\)](#).**

(State Ethics Commission; [40 IAC 2-1-8](#); filed Mar 10, 1988, 2:00 p.m.: 11 IR 2328; filed Oct 22, 1991, 11:10 a.m.: 15 IR 203; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 8. [40 IAC 2-1-9](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-1-9](#) Conflict of interest; prohibitions

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6-9](#); [IC 4-2-6-10.5](#)

Sec. 9. (a) A state officer or employee shall not engage in conduct that constitutes a conflict of interest. It is the state officer's or employee's duty to determine if a potential conflict of interest exists, to avoid the conflict, if possible, or, where applicable, to disclose a conflict as follows:

(1) A state officer or employee may seek an advisory opinion to determine whether a conflict of interest exists using the procedure in [40 IAC 2-2](#).

(2) If the state officer or employee determines that a conflict of interest or potential conflict of interest exists, that individual shall, if possible, be screened from participating in the matter and the matter shall be assigned to another individual who does not have a conflict of interest.

(3) The state officer or employee may make a disclosure under [IC 4-2-6-9](#) or [IC 35-44-1-3](#), where applicable.

(b) A state officer or employee shall not solicit or accept compensation other than that provided for by law for such state officer or employee for the performance of official duties.

(c) A state officer or employee, other than in performing duties in making payments to other state officers or employees as provided by law, shall not pay or offer to pay any state officer or employee any compensation for the performance of official duties.

(d) A state officer or employee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

(e) A state officer or employee, in personal dealings, with a person who has a business relationship with the employee's agency, shall not receive any special terms or benefit not available to others not employed with the

agency.

~~(f) A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering the cost and the benefit by such use.~~

~~(g) A state officer or employee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.~~

~~(h) A state officer or employee shall not divulge information of a confidential nature, except as permitted by law.~~

(a) The ethics rule pertaining to conflicts of interest and decisions and voting is found in [42 IAC 1-5-6 \(IC 4-2-6-9\)](#).

(b) The ethics rule pertaining to conflicts of interest and contracts is found in [42 IAC 1-5-7 \(IC 4-2-6-10.5\)](#).

(State Ethics Commission; [40 IAC 2-1-9](#); filed Mar 10, 1988, 2:00 p.m.: 11 IR 2329; filed Oct 22, 1991, 11:10 a.m.: 15 IR 203; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 9. [40 IAC 2-2-1](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-1](#) Procedure

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 1. (a) The commission may render **formal** advisory opinions. ~~with respect to the interpretation and applicability of [IC 4-2-6](#), this title, and any other statute or rule governing official conduct of state officers or employees.~~

(b) An **A formal** advisory opinion may be requested by any state officer, employee, **issued upon motion of the commission or to:**

- (1) a current or former state officer;**
- (2) a current or former special state appointee;**
- (3) a current or former employee;**
- (4) a person who has or has had a business relationship with an agency; ~~commission member, or commission employee.~~**
- (5) the inspector general.**

(c) Requests for **formal advisory** opinions shall be in writing and signed by the person making the request. ~~and shall be designated an inquiry. The inquiry request shall also state the official status of the person making the request and shall state disclose all material facts necessary for the commission to understand the circumstances and render a complete opinion. The request must relate to a real an actual set of circumstances Upon receipt of a letter of inquiry, the commission shall send an informational copy to the relevant state officer or appointing authority, if any. and to the requesting party.~~

(d) The person requesting the **formal** advisory opinion shall ~~receive notice from the staff of the time and place to appear before the commission. The commission staff shall send to the person making the request notice of the date, time, and place to appear before the commission.~~ The name of the person filing the inquiry request shall appear on the agenda of the meeting.

(e) In an emergency situation, the ~~chairman~~ **commission chair** and the director shall decide whether to add to the agenda a request ~~which that~~ was received less than ~~seven (7)~~ **ten (10) calendar** days before a **commission** meeting. ~~of the commission.~~

(f) The director shall ~~mail~~ **send** a copy of the ~~letter of inquiry~~ **request for a formal advisory opinion** to the commission members approximately seven (7) days before the commission's meeting. ~~The person requesting the opinion shall be asked to appear before the commission at its meeting to answer questions. The commission shall decide~~ **render its opinion** in a public meeting by vote of a majority of commission members present.

(g) Following the commission's decision, the commission staff shall prepare a written **formal** advisory opinion. A copy ~~of the opinion~~ shall be ~~mailed~~ **sent** to the person ~~requesting an opinion.~~ **who requested the advice.** A copy of the **formal advisory** opinion shall **also** be sent to the state officer or appointing authority **of the person requesting the formal advisory opinion**, if any. ~~The~~ **Reliance upon a formal** advisory opinion is conditioned upon the following:

- (1) The facts and circumstances actually exist.
- (2) All of the relevant facts and circumstances related to the **formal advisory** opinion have been disclosed to the commission.

(h) ~~Any~~ **A formal advisory** opinion rendered by the commission ~~until amended or revoked,~~ is binding on the commission in any subsequent allegations concerning the person who requested the opinion and who acted on it **the advice given by the commission** in good faith, unless material facts were omitted or misstated by the person in the request for the **formal advisory** opinion or testimony before the commission.

(State Ethics Commission; [40 IAC 2-2-1](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 10. [40 IAC 2-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-2](#) Appeal from formal advisory opinions

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 2. (a) The person who made ~~an inquiry~~ **a request for a formal advisory opinion** and any person directly affected by the commission's **formal** advisory opinion may appeal to the commission for reconsideration or clarification of the ~~advisory~~ opinion.

(b) Any such appeal shall be made in writing to the commission within fifteen (15) days of receipt of the **written formal** advisory opinion. ~~letter.~~

(State Ethics Commission; [40 IAC 2-2-2](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 204; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 11. [40 IAC 2-2-3](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-3](#) Failure to comply; investigation

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 3. ~~If A person who has requested an~~ **been advised by the commission in a formal** advisory opinion ~~has been advised that he or she has a~~ **that a conflict or potential** conflict of interest ~~and to~~ **exists must** remove himself or herself from ~~any the~~ conflict or potential conflict of interest ~~and has failed to do so after having been given a reasonable opportunity to do so,~~ **immediately. If the person fails to do so,** the commission may review the matter to determine compliance with the **formal** advisory opinion and **vote** in executive session ~~vote to initiate an~~ **to refer the matter to the inspector general for** investigation.

(State Ethics Commission; [40 IAC 2-2-3](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 12. [40 IAC 2-2-4](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-4](#) Signed by director

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 4. All **formal advisory** opinions rendered by the commission shall be signed by the director.

(State Ethics Commission; [40 IAC 2-2-4](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 13. [40 IAC 2-2-5](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-5](#) Others may provide information

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 5. The commission may permit or request any person to submit memoranda, briefs, or other relevant material or to provide oral information **testimony** relevant to its determination **in rendering a formal advisory opinion**.

(State Ethics Commission; [40 IAC 2-2-5](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 14. [40 IAC 2-2-6](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-2-6](#) Public record

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#)

Sec. 6. The commission staff will periodically publish for distribution the accumulated **formal** advisory opinions with the names removed in a format explaining the:

- (1) facts; ~~the~~
- (2) question; and ~~the~~
- (3) commission's opinion.

(State Ethics Commission; [40 IAC 2-2-6](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 15. [40 IAC 2-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-3-2](#) Investigations

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6-4](#); [IC 4-21.5-3](#)

Sec. 2. (a) ~~The commission shall enforce the statutes and rules under its jurisdiction primarily by means of its own independent staff investigations and commission hearings. The process may include confidential commission determination of sufficient evidence to warrant an investigation, confidential investigation and commission~~

determination of probable cause, and public hearing.

(b) An investigation may be initiated by any of the following:

- (1) The commission.
- (2) Request of the governor.
- (3) A complaint filed by an individual with direct knowledge of facts central to an alleged violation.

(c) The procedure for investigation on commission initiative shall be as follows:

- (1) The commission may use information received in any way to form the basis for an investigation. When information is received, the director shall first determine whether the information indicates a possible violation of statute or rule within the commission's jurisdiction. If the information indicates a possible violation of statute or rule within the commission's jurisdiction, the director may instruct the commission's investigator to do preliminary factfinding or refer the matter to an appropriate investigative authority. In either case, the commission shall be informed at its next meeting of the action taken. The factfinding shall be for the purpose of providing the commission with verified information by determining if the allegation's facts are correct. Upon completion of this preliminary factfinding, the matter shall be brought to the commission for determination under [IC 4-2-6-4](#)(a)(1) whether the commission wants to initiate an investigation.
- (2) The investigation is initiated by adoption of a resolution of the commission stating the nature and scope of the investigation and actions or activities to be investigated.
- (3) A copy of the resolution stating the nature of the investigation and a general statement of the applicable statute or rule with respect to the investigation shall be sent to the respondent.

(d) The procedure for investigation on receipt of a request of the governor shall be as follows:

- (1) The director shall instruct the commission's investigator to proceed with an investigation or shall refer the matter to an appropriate investigative authority. In either case, the commission shall be informed at its next meeting of action taken.
- (2) A copy of the governor's request for an investigation shall be sent to the respondent.

(e) Investigation on receipt of a complaint shall be as follows:

- (1) All complaints to be considered by the commission shall be filed in writing with the commission and shall contain the following:
 - (A) The name and address of the person or persons who filed the complaint.
 - (B) The name and address of the person against whom the complaint is filed.
 - (C) The state government position, if applicable, held by the person against whom the complaint is filed.
 - (D) A clear and concise statement of the facts upon which the complaint is based.
 - (E) Which sections of statute or rule are alleged to be violated.
 - (F) A statement of the facts as to which the complainant has personal knowledge.
 - (G) The names and addresses of other persons having personal knowledge of the acts complained of and the nature and extent of each person's knowledge.
 - (H) Verification under penalty of perjury that the facts stated are true to the best of the complainant's knowledge and the signature of the complainant.
- (2) The complaint shall include the following: "If the commission finds, after preliminary investigation, that probable cause exists to support the alleged violation, I agree to be called as a witness to testify to the charge above set forth, under oath. The state ethics commission requests you keep confidential the filing of this complaint and facts involved, except from those people directly involved in the investigation of this matter."
- (3) A complaint dismissed under [IC 4-2-6-4](#)(b)(2)(A)(i) or [IC 4-2-6-4](#)(b)(2)(A)(iii) will not again be entertained by the commission unless the commission is provided with new facts which materially add to the complaint.

(f) Upon receipt of a copy of the resolution of the commission, a copy of the request of the governor to initiate an investigation, or a copy of the complaint, the respondent may respond in writing within twenty (20) days to the allegations if he or she so desires.

(g) During investigations, the procedure shall be as follows:

- (1) The scope of investigations shall be limited to the allegations, but shall include an investigation of all facts and persons materially related to the allegations at issue.
- (2) If, during the course of an investigation, evidence of a wrongful act not materially related to the allegations at issue is discovered, such evidence shall be reported to the commission in a separate report. The wrongful act shall not be further investigated in the absence of direction from the commission with respect thereto.

Upon receipt of a separate report containing evidence of the wrongful act not materially related to the allegations at issue, the commission may:

- (A) forward evidence of the commission of a crime to the appropriate law enforcement official;
- (B) forward evidence of the commission of any other wrongful act to the appropriate disciplinary or law enforcement official; or
- (C) decide to initiate its own investigation.

(h) At the conclusion of its investigation, the commission shall make a determination of whether or not probable cause exists to believe that a violation of [IC 4-2-6-4](#), [40 IAC 2-1](#), or any other statute or rule governing official conduct of state officers or employees has occurred. The procedure shall be as follows:

- (1) If the commission determines that probable cause does not exist to believe a violation has occurred, the commission shall immediately send written notice of such a determination to the respondent and, if a complaint has been filed, to the party who made the complaint or, if the investigation was initiated at the governor's request, to the governor.
- (2) If the commission determines that there is probable cause to believe that a violation has been committed, it shall state the name of the person alleged to have committed a violation, a citation to the statute or rule that may have been violated, and the particulars of the alleged violation or violations which may include violations the commission has, as a result of its investigation, probable cause to believe have occurred which were not contained in the complaint, resolution, or governor's request. The director shall notify the respondent, the complainant, and the office or appointing authority, if any, of the date, time, and place of the public hearing. The respondent shall be mailed a written notice by certified mail, return receipt requested, in accordance with [IC 4-2-6-4\(b\)\(2\)\(C\)](#) and [IC 4-21-5-3](#).

(i) An investigation conducted prior to a probable cause finding shall be confidential except the respondent may, in writing at any time, elect to waive the confidentiality protection of [IC 4-2-6-4](#). If the respondent has agreed in writing to waive confidentiality, the commission may in its discretion release any information at any time. The commission may deem public statements by a respondent concerning the substance of the investigation to be a waiver of confidentiality. In any case, the identity of the complainant or information as to how the investigation was initiated shall be disclosed to the respondent.

- (1) During an investigation, the procedures concerning confidentiality shall be as follows:
 - (A) If the investigation is confidential, the allegations and any information supplied to or received from the commission shall not be disclosed during the investigation to any third party by the commission, or a staff member except as necessary to conduct the investigation.
 - (B) An employee of the commission may acknowledge the existence and scope of an investigation along with a statement that no finding of probable cause has been made and that no adverse inference of impropriety or guilt should be drawn from the decision to investigate.
- (2) From the initiation of an investigation and during the pendency of an investigation until a finding of probable cause has been made, the proceedings of the commission shall be in executive session, and the activities of commission staff in connection with the investigation shall be confidential.
- (3) If the commission determines that no probable cause exists, all records of the investigation shall be kept confidential by the commission unless the respondent has waived confidentiality. The respondent may request that any of the persons interviewed be informed that the commission did not find probable cause. The respondent is not entitled to examine documents or records obtained or prepared by the commission in connection with the investigation, unless the respondent has waived confidentiality. An employee of the commission may acknowledge that the commission did not find probable cause to support an alleged violation.
- (4) No provisions of this section shall prevent the commission from forwarding a copy of a complaint or any other relevant information to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate authority for action, and staying the commission's proceedings pending the other action.

(j) After a reasonable period of time, the commission may review the matter again if the person or agency to which the complaint was forwarded fails or refuses to take action in regard to the matter and the commission may vote to proceed. **A request for investigation that is filed with the commission shall be referred to the inspector general for investigation consistent with [IC 4-2-6-4](#).**

(State Ethics Commission; [40 IAC 2-3-2](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 205; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 16. [40 IAC 2-3-3](#) IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-3-3 Agreed settlements

Authority: **IC 4-2-6-4**

Affected: **IC 4-2-6-12**

Sec. 3. (a) ~~The commission may resolve cases through agreements with respondents.~~ **consider an agreed settlement entered into by the inspector general and the respondent to an ethics complaint in a public meeting. An agreed settlement may be accepted or rejected at the discretion of the commission.**

(b) ~~In negotiations to settle under this section, if the negotiations occur before a vote to find probable cause and schedule a public hearing, the chairman or his designee will represent the commission. If the negotiations occur after a vote to find probable cause and schedule a public hearing, the chairman shall designate a person to represent the commission. At an informal conference to negotiate, no record shall be made, and no statement made by any person at such conference~~ **No statement made by any person during settlement negotiations shall be used as evidence in any subsequent public hearing or proceeding.**

(c) ~~If the respondent and the chairman or his designee concur that an agreed settlement would be appropriate, they may submit a proposal in writing to the commission for its approval or disapproval by majority vote. If the time of the agreed settlement is prior to a vote of the commission that probable cause exists to support an alleged violation, the commission vote on approval of the agreed settlement shall be in executive session unless the respondent has waived confidentiality. If the time of the agreed settlement is after the commission has voted that probable cause exists to support an alleged violation, the vote on approval or disapproval of the agreed settlement shall be taken at an open meeting. In either case, The commission shall state its findings in writing in a~~ **written report, signed by a majority of the commission members. The report may make a recommendation for the sanctions to be imposed as authorized in IC 4-2-6-4(b)(2)(E) or IC 4-2-6-12.**

(d) ~~The report containing shall:~~

(1) ~~contain findings of fact and recommendations; shall~~

(2) ~~be open to public inspection as a public record; and shall~~

(3) ~~be presented to those individuals listed in IC 4-2-6-4(b)(2)(G).~~ **IC 4-2-6-4(b)(2)(J).**

The commission may present the report to those individuals listed in IC 4-2-6-4(b)(2)(K).

(State Ethics Commission; 40 IAC 2-3-3; filed Oct 22, 1991, 11:10 a.m.: 15 IR 207; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: 20071226-IR-040070658RFA)

SECTION 17. **40 IAC 2-3-4** IS AMENDED TO READ AS FOLLOWS:

40 IAC 2-3-4 Public hearings

Authority: **IC 4-2-6-4**

Affected: **IC 4-2-6-12; IC 4-21.5-3**

Sec. 4. (a) ~~The following are discovery and prehearing rights:~~ **Upon a finding of probable cause, the commission shall set a public hearing on the matter.**

(1) **A copy of the complaint filed by the inspector general shall be sent to the respondent pursuant to service requirements under IC 4-21.5-3-1.**

(2) **Notice of a public hearing shall be served upon the respondent and all interested parties in accordance with the requirements set forth in IC 4-21.5-3-20.**

~~(3) The respondent may:~~

(A) ~~be represented by counsel~~ **who shall file a written appearance with the commission;**

(B) ~~with the exception of interrogatories, exercise all discovery provisions of rules under Trial Rules 26 through - 37; of the Indiana Rules of Trial Procedure; and~~

(C) ~~file with the commission a motion for any order or action not inconsistent with law or this article, for example, motion to dismiss, motion for more definite statement, motion to enlarge time, or motion for summary judgment.~~ **motions in writing at any time after the filing of the complaint, with the original filed at the commission's office and a copy served on all interested parties.**

~~(2) Motions may be made in writing at any time after the commencement of the adjudicatory proceeding, or~~

~~they may be made during a prehearing conference.~~

~~(3) The original of a written motion shall be filed at the commission's office and a copy served on all persons designated in section 5(a) of this rule or their attorneys.~~

~~(4) The person who is to preside at the hearing, which may be the chairman of the commission, his designee, or the administrative law judge for the hearing, shall generally rule on motions. However, any action which would terminate the adjudicatory proceeding may be taken only by the commission.~~

(4) Public hearings may be conducted by any of the following:

(A) The full commission.

(B) One (1) or more commission members acting as administrative law judges.

(C) Another individual, not necessarily an employee of the commission, appointed by the commission, acting as an administrative law judge under [IC 4-21.5-3-9](#).

However, any action which would terminate the adjudicatory proceeding may be taken only by the commission.

~~(5) On motion of a party, or the commission's own motion,~~ **the commission, or an ALJ,** a prehearing conference may be held in conformance with [IC 4-21.5-3-18](#) and [IC 4-21.5-3-19](#).

~~(6) Unless otherwise ordered by the presiding officer as a result of a prehearing conference,~~ **administrative law judge or the commission, the inspector general** and respondent or counsel for respondent shall exchange the names and addresses of witnesses at least ten (10) days prior to the public hearing.

~~(7) Upon motion of a party, or the commission's own motion,~~ the commission, ~~may consolidate for hearing or the administrative law judge, hearings on two (2) or more allegations or cases against different persons~~ **may be consolidated** if the commission determines **it is determined** that there is substantial identity of facts arising out of a common transaction or event or if the respondent is the same person although the violations alleged arose from different complaints, transactions, or events. Consolidation shall not be ordered if consolidation will substantially prejudice the right of any party.

~~(8) Ex parte communications are governed by [IC 4-21.5-3-11](#).~~

(b) Procedures at the hearing shall be as follows:

~~(1) Public hearings and prehearing matters may be conducted by any of the following:~~

~~(A) The full commission.~~

~~(B) One (1) or more commission members acting as administrative law judges.~~

~~(C) Another individual, not necessarily an employee of the commission, appointed by the commission, acting as an administrative law judge under [IC 4-21.5-3-9](#).~~

~~(2) (1) Hearings shall be as informal as may be reasonable and appropriate under the circumstances.~~ **The receipt of evidence shall be informal without strict compliance with the Indiana Rules of Evidence. Hearsay evidence may be admissible under [IC 4-21.5-3-26](#).**

(2) A quorum must be established to proceed with a public hearing conducted by the full commission. A majority of the commissioners establishes a quorum.

~~(3) The person presiding, which may be The commission chairman, his designee, or the~~ **an** administrative law judge shall conduct the hearing making all decisions regarding admission or exclusion of evidence or any other procedural matters. The order of ~~the proceeding is at the discretion of the presiding officer.~~ **commission or the administrative law judge.**

~~(4) The respondent shall be afforded appropriate due process protection consistent with [IC 4-21.5-3](#), including the following:~~

~~(A) The right to be represented by counsel.~~

~~(B) The right to call and examine witnesses.~~

~~(C) The right to introduce exhibits.~~

~~(D) The right to cross-examine witnesses.~~

~~(5) Commission members~~ **and ALJs** shall be disqualified in accordance with [IC 4-21.5-3-9](#) through [IC 4-21.5-3-13](#).

(6) Commissioners and ALJs may question witnesses only after opposing parties have had the opportunity to cross examine witnesses.

(7) A party may move for summary judgment at any time.

(c) After the hearing, the procedure shall be as follows:

~~(1) Deliberation and discussion of a report at the conclusion of the public hearing may be conducted in executive session. Vote on the report shall be conducted in a public meeting.~~

(1) The commission or the ALJ may request that the interested parties submit proposed findings of fact and conclusions of law for the commission's acceptance, rejection, or modification.

(2) The full commission shall deliberate in executive session after the conclusion of the public hearing.

~~(2) (3) A report by less than the full commission serving as administrative law judges or by another an individual who has been appointed to be an administrative law judge shall be:~~

~~(A) a recommended report; and shall be~~

~~(B) transmitted to the full commission and served upon the respondent. all interested parties.~~

~~(3) (4) In regard to a recommended report, the parties may present briefs or request oral argument under [IC 4-21.5-3-28](#) limited to the evidence previously submitted.~~

~~(4) The final report shall be adopted by the commission at a public meeting. The commission is the ultimate authority under [IC 4-21.5](#).~~

~~(5) Findings shall be made on a preponderance of the evidence and it shall require the concurrence of at least three (3) members of the commission to find a violation or impose a penalty.~~

~~(6) The report shall be signed by the commission members present and voting at the public meeting, transmitted by certified mail to the respondent, return receipt requested, and shall be made available to the public, to those persons required to receive the report under [IC 4-2-6-4](#)(b)(2)(C) and may be forwarded to any of the persons listed in [IC 4-2-6-4](#)(b)(2)(H).~~

~~(5) The finding of a violation by the commission must be based on a preponderance of the evidence and be supported by a majority vote of the quorum. If the commission finds a violation, the commission may set the matter for a hearing to determine a penalty as provided in [IC 4-2-6-12](#). If a separate penalty hearing is set, the commission may deliberate the determination of a penalty in executive session.~~

~~(6) The commission shall state its findings in a written report supported and signed by a majority of the commission members. The final report shall be adopted by the commission at a public meeting. The report shall be made public and served upon the respondent and all interested parties. The reports:~~

~~(A) shall be forwarded to all individuals set forth in [IC 4-2-6-4](#)(b)(2)(J); and~~

~~(B) may be forwarded to individuals listed under [IC 4-2-6-4](#)(b)(2)(K).~~

~~(7) The commission is the ultimate authority under [IC 4-21.5](#).~~

(State Ethics Commission; [40 IAC 2-3-4](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 208; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 18. [40 IAC 2-4.5](#) IS ADDED TO READ AS FOLLOWS:

Rule 4.5. Fines

[40 IAC 2-4.5-1](#) Fines

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6-8](#); [IC 4-2-6-12](#)

Sec. 1. Any fine imposed by the commission under [IC 4-2-6-8](#) or [IC 4-2-6-12](#) shall be made payable to the Indiana state ethics commission and remitted to the general fund.

(State Ethics Commission; [40 IAC 2-4.5-1](#))

SECTION 19. [40 IAC 2-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-5-1](#) Notice of meetings and agendas

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6](#); [IC 5-14-1.5](#)

Sec. 1. (a) The commission shall give notice of meetings and emergency meetings in conformance with [IC 5-14-1.5](#). Commission staff shall prepare an agenda listing specific items to be considered. The commission shall adopt an agenda at the beginning of its meeting. and may make Any changes in to the posted agenda shall be:

(1) made for good cause only; and

(2) amended during the course of the meeting.

(b) The director or his or her designee shall sign on behalf of the commission notices of meetings.

(State Ethics Commission; [40 IAC 2-5-1](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 210; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 20. [40 IAC 2-5-3](#) IS AMENDED TO READ AS FOLLOWS:

[40 IAC 2-5-3](#) Meeting by telephone and other communications media technology

Authority: [IC 4-2-6-4](#)

Affected: [IC 4-2-6-4.3](#)

Sec. 3. The commission may utilize telephone conference calls, speaker phone, and other communications media technology as it becomes available to conduct commission business when necessary due to emergencies of the situation. However, it is the commission view that the public interest is best served by having public hearings held in person, rather than by use of communication media technology. **means of communication as set forth in [IC 4-2-6-4.3](#).**

(State Ethics Commission; [40 IAC 2-5-3](#); filed Oct 22, 1991, 11:10 a.m.: 15 IR 210; readopted filed Aug 2, 2001, 3:15 p.m.: 24 IR 4227; readopted filed Nov 29, 2007, 11:14 a.m.: [20071226-IR-040070658RFA](#))

SECTION 21. THE FOLLOWING ARE REPEALED : [40 IAC 2-3-5](#); [40 IAC 2-3-6](#); [40 IAC 2-3-7](#); [40 IAC 2-3-8](#); [40 IAC 2-4-2](#).

[Notice of Public Hearing](#)

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